

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.	CAA-05-2013-0036
)		
Marquette County Solid Waste)	Proceeding to Assess a Civil Penalty	
Management Authority,)	Under Section 113(d) of the Clean Air Act,	
)	42 U.S.C. § 7413(d)	
Marquette, Michigan,)		
)		
Respondent.)		
_____)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division,
U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Marquette County Solid Waste Management Authority
(MCSWMA or Respondent), a municipal governmental authority in Marquette, Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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MARQUETTE, MI 49801

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

I. New Source Performance Standards for Municipal Solid Waste Landfills

9. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the Administrator of EPA to promulgate regulations establishing standards of performance for new sources (the NSPS regulations).

10. The NSPS regulations apply to the owner or operator of any “stationary source” that contains an “affected facility,” the construction or modification of which is commenced after the date of publication of any standard applicable to that facility. *See* 40 C.F.R. § 60.1(a).

11. A “new source” is a stationary source, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations prescribing a standard of performance applicable to such source. *See* Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

12. A “stationary source” is any building, structure, facility, or installation which emits or may emit any air pollutant. *See* Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3).

13. An “affected facility” is, with reference to a stationary source under the NSPS regulations, any apparatus to which a standard is applicable. *See* 40 C.F.R. § 60.2.

14. Under Section 111 of the CAA, EPA promulgated the NSPS for Municipal Solid Waste Landfills (MSW Landfills) at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. § 60.750 *et seq.*, applicable to each MSW landfill that commenced construction, reconstruction, or modification on or after May 30, 1991. *See* 40 C.F.R. § 60.750(a).

15. “Modification” means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator “commences” construction on the horizontal or vertical expansion. *See* 40 C.F.R. § 60.751.

16. “Commenced” means, with respect to the definition of “new source” in section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. *See* 40 C.F.R. § 60.2.

17. The MSW Landfills NSPS at 40 C.F.R. § 60.757(a) requires owners or operators of subject sources to calculate the “design capacity” of the landfill using “good engineering practices,” and submit an initial design capacity report to EPA no later than: (a) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996; or (b) 90 days after the date of commenced construction, modification, or reconstruction for landfills that commenced construction, modification, or reconstruction on or after March 12, 1996.

18. The “design capacity” of the landfill is defined as the maximum amount of solid waste a landfill can accept, as stated in terms of megagrams (Mg) for its mass, or cubic meters

(m³) for its volume, as set forth in its most recently issued permit, plus any in-place waste not accounted for in the landfill's most recent permit. *See* 40 C.F.R. § 60.751.

19. The MSW Landfills NSPS at 40 C.F.R. § 60.752(a) – (b) requires that when the “design capacity” of a landfill equals or exceeds 2.5 million Mg by mass and 2.5 million m³ by volume, the owner or operator must either comply with the collection and control requirements of 40 C.F.R. § 60.752(b)(2), or annually calculate the nonmethane organic compounds (NMOC) emissions rate from the landfill.

20. The MSW Landfills NSPS at 40 C.F.R. §§ 60.752(b)(1)(ii)(A) requires that if the MSW landfill owner or operator elects to annually calculate the NMOC emissions rate and it calculates an NMOC emissions rate equal to or exceeding 50 Mg per year (Mg/yr), then the owner or operator must comply with the collection and control requirements of 40 C.F.R. § 60.752(b)(2).

21. 40 C.F.R. § 60.752(b)(2) requires, *inter alia*, that within 30 months after the first annual NMOC report in which the calculated NMOC emission rate equals or exceeds 50 Mg/yr, the owner or operator of the MSW landfill shall install and operate a system that collects and controls NMOC gas emissions from the landfill in accordance with the provisions of 40 C.F.R. §§ 60.753, 60.755, and 60.756.

22. Section 111(e) of the CAA, 42 U.S.C. § 7411(e) states that after the effective date of standards of performance promulgated under that section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

II. Title V Permitting Requirements

23. Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources,” and other sources made subject under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

24. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that after the effective date of any permit program approved under the CAA, it is unlawful for any person to operate a stationary source except in compliance with a permit issued by a permitting authority under the CAA, 42 U.S.C. §§ 7661-7661f.

25. Section 503(a) of the CAA, 42 U.S.C. § 7661b(a), provides that any stationary source specified in Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), shall become subject to a permit program and required to have a permit on the later of the following dates: (1) the effective date of a permit program applicable to the source; or (2) the date such source becomes subject to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

26. The requirements of Part 70 apply to any “major source” located in a state that has received whole or partial approval of its Title V program. *See* 40 C.F.R. § 70.3.

27. 40 C.F.R. § 60.752(c) states that the owner or operator of a landfill subject to the MSW Landfills NSPS with a design capacity greater than or equal to 2.5 million Mg by mass and 2.5 million m³ by volume is a “major source” subject to the Part 70 or 71 permitting requirements.

28. 40 C.F.R. § 60.752(c) requires that an owner or operator of a MSW landfill subject to the MSW Landfills NSPS and Title V is required to submit an accurate and complete Title V permit application, including information required to be submitted with the application,

no later than: (a) June 10, 1996 for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996; or (b) 90 days after the commencement date of the construction, modification, or reconstruction for landfills that commenced construction, modification, or reconstruction on or after March 12, 1996.

29. EPA published the final approval for the State of Michigan's Title V Clean Air Act Permit Program in the Federal Register on December 4, 2001. *See* 66 Fed. Reg. 62949. The final approval became effective on November 30, 2001.

30. Under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for NSPS and Title V violations that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for NSPS and Title V violations that occurred after January 12, 2009.

31. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

32. The Administrator and the Attorney General of the United States, each through their respective delegates, have jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

33. MCSWMA is a municipal governmental authority, and is thus a “municipality” as that term is defined in Section 302(f) of the CAA, 42 U.S.C. § 7602(f).

34. MCSWMA was and is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

35. At all times relevant to this CAFO, MCSWMA owned and operated a MSW landfill at 600 County Road NP, Marquette, Michigan (the Landfill).

36. Beginning in December 1989, and at all times relevant to this CAFO, the Landfill accepted nonhazardous waste from households and businesses in Marquette County, Michigan.

37. The Landfill is a “stationary source” under the meaning of Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), because it is a facility or installation which emits or may emit an air pollutant.

38. The initial permitted design of the Landfill in 1988 called for 53 acres to be used for landfilling waste in Areas I-VI, and a total of 210 site acres, as authorized by Construction Permit No. 0461 issued on June 28, 1988 by the Michigan Department of Environmental Quality (MDEQ).

39. The original design capacity of the Landfill was 4,060,000 cubic yards (yd³) or 3,104,093 m³.

40. On March 6, 1996, MDEQ issued Construction Permit No. 0337 to MCSWMA authorizing a horizontal expansion of the Landfill consisting of constructing new Cell 0 to the west, and increasing the northern and eastern boundaries of the permitted landfill area.

41. The horizontal expansion of the Landfill referenced in paragraph 40, above, increased the permitted size of the Landfill to 62 acres.

42. On or about October 4, 1999, MCSWMA “commenced” construction under the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), and 40 C.F.R. § 60.2, of the horizontal expansion of the Landfill referenced in paragraphs 40-41, above.

43. At all times relevant to this CAFO, the horizontal expansion of the Landfill referenced in paragraphs 40-42, above, was a “modification” of the Landfill, as that term is defined in the MSW Landfills NSPS at 40 C.F.R. § 60.751.

44. Beginning with MDEQ issuing to MCSWMA Construction Permit No. 0337 for the Landfill on March 6, 1996, and continuing until September 17, 2009, the horizontal expansion of the Landfill referenced in paragraphs 40-43, above, increased the design capacity of the Landfill to an estimated capacity of 5,750,000 yd³ (4,396,190 m³) of refuse, in excess of the 2.5 million Mg mass and the 2.5 million m³ volume thresholds of the MSW Landfills NSPS.

45. The horizontal expansion of the Landfill referenced in paragraphs 40-44, above, resulted in an NMOC emission rate from the Landfill in excess of 50 Mg/yr.

46. The NMOC emission rate of the Landfill continued to exceed the 50 Mg/yr threshold of the MSW Landfills NSPS at 40 C.F.R. § 60.752(b) from October 4, 1999 through no earlier than September 17, 2009.

47. Beginning no later than October 4, 1999, the Landfill was an “affected facility” under the MSW Landfills NSPS, as that term is defined in the MSW Landfills NSPS at 40 C.F.R. § 60.750(a).

48. Beginning no later than October 4, 1999, the MSW Landfills NSPS applied to the Landfill because it was a “new source” under 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), and a municipal solid waste landfill that commenced construction, reconstruction, or modification on or after May 30, 1991.

49. On July 7, 2004, MDEQ issued Construction Permit No. 4065 to MCSWMA, which authorized the deletion of Cells 8 and 9, thus reducing the Landfill's permitted capacity to 5,367,600 yd³ (4,103,825 m³).

50. On September 12, 2007, MDEQ issued Construction Permit No. 4090 to MSCWMA, which authorized the deletion of Cell 7 of the Landfill.

51. On September 17, 2009, MDEQ issued Construction Permit No. 4105 to MSCWMA, which authorized the deletion of Cells 5 and 6, thus reducing the Landfill's permitted capacity to 3,267,746 yd³ (2,498,371 m³).

52. Following the September 17, 2009 contraction of the Landfill referenced in paragraph 51, above, the maximum design capacity of the Landfill fell below the 2.5 million m³ volume applicability threshold of the MSW Landfills NSPS at 40 C.F.R. § 60.752(b).

Count I

53. Complainant incorporates paragraphs 1 through 52 of this CAFO as if set forth in this paragraph.

54. Beginning on or before July 2, 2002, and continuing until September 17, 2009, MCSWMA was obligated by 40 C.F.R. § 60.752(b)(2) to install at the Landfill an NMOC collection and control system meeting the requirements of 40 C.F.R. § 60.752(b)(2)(ii) and (iii).

55. MCSWMA did not install at the Landfill prior to September 17, 2009, an NMOC collection and control system meeting the requirements of 40 C.F.R. § 60.752(b)(2)(ii) and (iii).

56. MCSWMA's failure between July 2, 2002 and September 17, 2009, to install an NMOC collection and control system at the Landfill meeting the requirements of 40 C.F.R. § 60.752(b)(2)(ii) and (iii) violated 40 C.F.R. § 60.752(b)(2)(ii) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

Count II

57. Complainant incorporates paragraphs 1 through 52 of this CAFO as if set forth in this paragraph.

58. Beginning on or before July 2, 2002, and continuing until September 17, 2009, MCSWMA was obligated by 40 C.F.R. § 60.752(b)(2)(iii) and (iv) to:

- (a) collect the NMOC gas generated within the Landfill;
- (b) route it to a control system meeting the requirements of either 40 C.F.R. § 60.752(b)(2)(iii)(A), (B), or (C); and
- (c) operate the installed collection and control device in accordance with 40 C.F.R. §§ 60.753, 60.755, and 60.756.

59. Between July 2, 2002 and September 17, 2009, MCSWMA failed to:

- (a) collect the NMOC gas generated within the Landfill;
- (b) route it to a control system meeting the requirements of either 40 C.F.R. § 60.752(b)(2)(iii)(A), (B), or (C); or
- (c) operate the installed collection and control device in accordance with 40 C.F.R. §§ 60.753, 60.755, and 60.756.

60. MCSWMA's failure between July 2, 2002 and September 17, 2009, to collect the NMOC gas generated within the Landfill, route it to a control system meeting the requirements of either 40 C.F.R. § 60.752(b)(2)(iii)(A), (B), or (C), and operate the installed collection and control device in accordance with 40 C.F.R. §§ 60.753, 60.755, and 60.756, violated 40 C.F.R. § 60.752(b)(2)(iii) and (iv), and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

Count III

61. Complainant incorporates paragraphs 1 through 52 of this CAFO as if set forth in this paragraph.

62. Beginning on October 4, 1999, and continuing until September 17, 2009, the Landfill was a "major source" subject to Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f, and its implementing regulations at 40 C.F.R. Part 70, because it was subject to the MSW

Landfills NSPS, and the design capacity of the Landfill was greater than or equal to 2.5 million Mg by mass and 2.5 million m³ by volume.

63. MCSWMA was thus required to submit to MDEQ an accurate and complete Title V permit application, including information required to be submitted with the application, by January 2, 2000, i.e. 90 days after the commencement of construction for the horizontal expansion referenced in paragraphs 40-45 above.

64. MCSWMA did not submit a Title V permit application for the Landfill to MDEQ on or before January 2, 2000, or at any time thereafter, up to, and including, May of 2013.

65. MCSWMA's failure between January 2, 2000 and September 17, 2009, to submit a Title V permit application for the Landfill to MDEQ violated Section 503(a) of the CAA, 42 U.S.C. § 7661b(a), 40 C.F.R. § 70.5(a), and 40 C.F.R. § 60.752(c).

Civil Penalty

66. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and the cooperation of MCSWMA, Complainant has determined that an appropriate civil penalty to settle this action is \$76,348.00.

67. Within 30 days after the effective date of this CAFO, Respondent must pay a \$76,348.00 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

68. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

69. This civil penalty is not deductible for federal tax purposes.

70. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 71, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

71. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a

quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

73. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

74. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 72, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

75. Respondent certifies that it is complying fully with the CAA and the MSW Landfills NSPS.

76. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

77. The terms of this CAFO bind Respondent, its successors and assigns.

78. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

79. Each party agrees to bear its own costs and attorneys' fees in this action.

80. This CAFO constitutes the entire agreement between the parties.

Marquette County Solid Waste Management Authority, Respondent

July 01, 2013
Date

Randall Yelle
Randall Yelle, Chairperson
Marquette County Solid Waste
Management Authority

United States Environmental Protection Agency, Complainant

8/13/13
Date

George T. Czerniak
George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Marquette County Solid Waste Management Authority

Docket No.

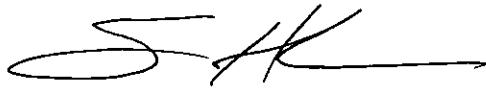
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-15-13

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the Matter of: Marquette County Solid Waste Management Authority

Docket No. CAA-05-2013-0036

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2013-0036 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Randall Yelle
Chairperson
Marquette County Solid Waste Management Authority
600 County Road NP
Marquette, Michigan 49855

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Chris Hare
Supervisor
Michigan Department of Environmental Quality
Upper Peninsula District
420 Fifth Street
Gwinn, Michigan 49841-3004

Tom Hess
Chief
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

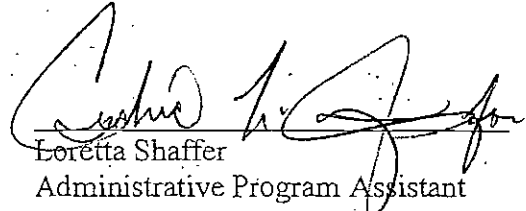
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Consent Agreement and Final Order

In the Matter of: Marquette County Solid Waste Management Authority.

Docket No. CAA-05-2013-0036

On the 21ST day of AUGUST 2013.


Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1660 0000 7676 1017